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IN THE

Supreme Court of the United States

October Term, 1970

No. 338

BLONDER-TONGUE LABORATORIES, INC.,
Petitioner,

vs.

UNIVERSITY OF ILLINOIS FOUNDATION,

AND

JFD ELECTRONICS CORPORATION,
Respondents.

BRIEF FOR RESPONDENT JFD ELECTRONICS CORPORATION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your respondent, JFD Electronics Corporation (Counterclaim-Defendant-Appellee below) requests, that, insofar as the counterclaim against it is involved, the Petition for a Writ of Certiorari for review of the Judgment of the United States Court of Appeals for the Seventh Circuit in the above action be denied.

Jurisdiction

Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C., Sec. 1254(1). The Federal jurisdiction of this Court was based on 28 U.S.C., Sec. 1338.

Counterstatement of the Case and Argument

Introduction

The University of Illinois Foundation (hereinafter Foundation) brought suit for infringement of two of its patents in the home television receiving antenna field, against Petitioner, Blonder-Tongue Laboratories Inc. (hereinafter BT), and a customer thereof. After BT had subjected itself to the jurisdiction of the Court, the customer was dropped as a party defendant.

In addition to answering the Foundation's Complaint and counterclaiming against the Foundation, BT counterclaimed against the Foundation and its exclusive licensee under the patents, your present Respondent, JFD Electronics Corporation (hereinafter JFD). (The relevant portions of the counterclaims by BT against JFD and of JFD's replies thereto, appear in the Respondent's Appendix (AR pages 1a-24a). JFD was accused of unfairly competing against BT. It was further alleged that the acts of the unfair competition rose to the level of violations of the anti-trust laws. In addition, BT accused JFD of infringing one of BT's own patents.

The District Court dismissed all of BT's counterclaims, and this was sustained by the Seventh Circuit Court of Appeals.

Question I

Petitioner BT's Question 1, concerns a simple conflict in decisions between two United States Circuit Courts of Appeals, involving the validity of one of the two Founda-

tion patents in suit. If there is any issue in this case on which Certiorari might be granted, it is only this issue.

In the counterclaims against JFD by BT (AR 1a-8a and 17a-20a), which are the only claims against JFD in the case, JFD is not a party to, nor is it concerned with, the conflicting decisions of the Seventh and Eighth Circuits. Accordingly, Certiorari as to JFD should not be granted.

Question II

The Foundation brought suit against BT on two patents, Isbell, No. 3,210,767, and Mayes, et al., No. Re. 25,740. The Court of Appeals below held the Isbell patent valid (Petitioner's Appendix: A 4, 12, 18) and the Mayes et al patent invalid (A 13, 14, 15, 18).

Contrary to what might appear from the context of Petitioner's Question II, the alleged wrongdoing and withholding of information in the Patent Office raised in Question II concerns, not the Isbell patent, but the Mayes et al. patent which the Court of Appeals held invalid. This holding of invalidity is not being contested by the Foundation. The material quoted in BT's Petition concerning Question II is taken from the portion of the Opinion below where the Mayes et al. patent, and not the Isbell patent, is discussed (A 14-15). Because Question II relates to now moot issues, it does not provide a basis for granting Certiorari.

Even if there had been wrongdoing in the obtaining of the Mayes et al. patent, Respondent JFD was not a party to the obtaining of the patent, or to any withholding of information. The Mayes et al. patent was duly issued by the U. S. Patent Office to the Foundation, and was licensed by the Foundation to JFD. Therefore, Question II does not present any basis upon which Certiorari can be granted with respect to JFD.

Furthermore, the Court below found that the Foundation had not defrauded the Patent Office in obtaining the Patent, especially in this situation, where the information Mayes failed to reveal was, in full legal equivalent, before the Examiner (third paragraph, A 15). Under other circumstances, the absence of candor by Mayes might serve as a ground for invalidating the Mayes et al. patent. But, that patent was already found invalid on other grounds, whereby all consideration of Question II should be rendered moot.

BT also attempts to bring in a collection of allegedly unfairly competitive acts by JFD, all of which are irrelevant to Question II, which concerns only the Mayes et al. patent. The District Court (A 32-36), affirmed by the Court below (A 16), found, in fact, that JFD did not perform any unfairly competitive or otherwise improper acts. BT presents no basis for overturning these findings of two levels of Courts.

Accordingly, no basis has been presented by Petitioner BT for granting Certiorari against Respondent JFD on Question II.

Question III

Petitioner's Question III is the only one squarely concerning JFD. This Question involves a separate counterclaim by BT against JFD under BT's own antenna patent, Blonder et al. No. 3,259,904. Conflicting decisions of different Circuit Courts are not involved in Question III. BT asserted a simple claim against JFD for infringement of the Blonder patent. Only issues of infringement by JFD and validity of the Blonder patent were raised. After considering the prior art, the District Court concluded that BT's alleged invention was obvious over the prior art and held the Blonder patent invalid. The Court of Appeals affirmed the District Court.

This was a simple infringement action, and no significant issue is presented by the Decision below which warrants this Court considering any issue involving validity of the Blonder et al. patent.

BT claims that there was a failure by the District Court to describe the scope of the prior art and the level of ordinary skill in the pertinent art, and maintains that this alleged omission from the District Court's Opinion warrants the granting of Certiorari by this Court with respect to the Decision on the Blonder et al. patent.

The only basis for BT's assertion that findings should have been made appears in *Graham* v. *Deere Co.*, 383 U.S. 1, 17 (1965).* Yet, this Court did not require that the District Court make findings. So long as the three inquiries are answered to the satisfaction of the deciding Court, the requirement of *Graham* is met.

After noting that the District Court did not make findings, which the Court of Appeals *preferred* to have, the Court of Appeals (A 18), itself considered the prior art, and noted that a particular prior art reference, viz. Technical Report No. 52, of the Antenna Laboratory, clearly shows the only feature of the Blonder, et al invention which was urged by one of the inventors to be the only feature distinguishing the invention over the prior art. Based on the foregoing, the Court of Appeals made its own determination that combining known prior art features with this particular feature would have been obvious to one skilled in the art, impliedly also determining what is the level of ordinary skill in the pertinent art and that the alleged invention was not above this level. The determination as to prior art requested by this Court was made

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*Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Agains this background, the obviousness or non-obviousness of the subject matter is determined.

by the Court of Appeals, any alleged defect in the Opinion of the District Court was cured by the review of prior art conducted by the Court of Appeals.

The Court of Appeals found the absence of patentability so clear as to not warrant remand to the District Court for further findings of fact with respect to the prior art and the level of skill in the prior art. In particular, Blonder, one of the co-inventors, testified that all mechanical elements of his invention were old, except for the spacing between the planes in which lay the dipole elements, or arms, of the antenna. The Court of Appeals was able to assess Technical Report No. 52 with respect to this particular feature.

Moreover, BT waived this objection in the Court below. Given the opportunity to supply the required analysis in the Court below, even to supply it in a manner favorable to itself, BT refused to do so (A 18). Its waiver should preclude BT from raising this objection in the Supreme Court.

The Supreme Court should not grant Certiorari to review the failure of the District Court to make detailed findings, when, under the circumstances, findings were not needed and adequate findings were made.

Conclusion

For the foregoing reasons, the Petition for Writ of Certiorari should be denied as to JFD and this case should be concluded as to JFD.

Respectfully submitted,

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JFD Electronics Corporation.

Of Counsel:

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APPENDIX

Answer and Counterclaim

IN THE UNITED STATES DISTRICT COURT.
• • (Caption—66-C-567) • •

Answer.

• • •

Counterclaim.

Now comes the defendant BT, by its attorneys, and by way of counterclaim to the complaint herein, alleges as follows:

1. Counterclaimant Blonder-Tongue Laboratories, Inc. (BT) is a corporation duly organized and existing under the laws of the State of New Jersey, having a principal place of business at 9 Alling Street, Newark, New Jersey, where it manufactures and sells for distribution throughout the United States, including within the Northern District of Illinois, antennas under its trademarks Golden Dart and Golden Arrow.

2. The University of Illinois Foundation (Foundation) is a non-profit corporation organized and existing under the laws of the State of Illinois, having its place of business at 224 Illini Union, Urbana, Illinois; and, upon information and belief, said Foundation is wholly owned and controlled by the University of Illinois of Urbana, Illinois, being an alter ego of said University, which, in turn, is a public institution supported principally by funds derived from the State of Illinois, the United States Government and other public sources and exempted from taxation upon the representation that it is a non-profit educational institution.

3. JFD Electronics Corporation (JFD), upon information and belief, is a corporation organized under the laws of the State of New York, having places of business and doing business at 6330 West Hermione Street and at 6139 West Touhy Avenue, Chicago, Illinois, where, and elsewhere within the Northern District of Illinois, it has engaged jointly with the said Foundation, and severally, in acts of unfair competition and other actionable causes hereinafter set forth.

Count I—For Unfair Competition.

4. This cause of action arises by virtue of diversity of citizenship and an amount in controversy exceeding ten thousand dollars, exclusive of interest and costs, and under the unfair competition and related laws of the State of Illinois and under 28 U. S. C. 1338.

5. On information and belief, the plaintiff and counterclaim defendant, said Foundation, after acquiring rights under certain so-called log-periodic antenna designs, including title to Isbell Patent No. 3,210,767, the subject matter of the complaint herein, entered into a commercial business arrangement, including a license agreement, with counterclaim defendant JFD to exploit the said antenna designs and patent in the field of receiving antennas for television and FM broadcast, under the terms of which the antennas for said field would be exclusively manufactured and sold by JFD and distributed by JFD from its place of business in Chicago, Illinois and elsewhere, and moneys received therefrom would be divided between JFD and the Foundation in accordance with certain percentage figures.

6. Further in accordance with said commercial business arrangement, on information and belief, the Foundation undertook the primary responsibility of policing said patent and of aiding the commercial sales of the antennas of

JFD, in which, as before stated, it shared in the sales returns, by news releases and other advertising media using the name of said Foundation and threatening all manufacturers in the industry (and thus counterclaimant BT) with suit if any so-called log-periodic antennas were made and sold by them, and by announcements and mailings to customers of such other manufacturers, including customers of BT, of suits which were filed and intended suits, regardless of whether such antennas were actually covered by said patent or any other patent of the Foundation or JFD.

7. On information and belief, said Foundation and JFD conspired unlawfully to restrain competition in the field of television and FM broadcast receiving antennas, and jointly and severally have engaged in unlawfully restraining such competition by at least the following acts and possibly others, presently unknown to counterclaimant, but as to which counterclaimant prays leave to add by amendment to this conterclaim upon completion of discovery herein:

(a) Publication of copious advertisements in national, technical and popular publications and elsewhere, circulated throughout the United States, including the Northern District of Illinois, using the names of both said Foundation and JFD, knowingly and falsely representing the scope of their patent coverage as embracing all antennas of the so-called log-periodic type, and generally threatening every antenna manufacturer (which includes counterclaimant BT) and customers in said field with patent suit even before the issuance of said Patent No. 3,210,767, illegally to restrain competition in the manufacture and sale of all log-periodic type antennas, including those clearly outside such patent coverage.

(b) Conspiring to use and using the name and prestige of the supposedly non-profit tax-free educational and re-

search institution, said Foundation, in falsely representing to the public, in newspapers, sales catalogs and magazine advertisements, within the Northern District of Illinois and throughout the country, that only said JFD had a right to make log-periodic antennas, and that only the antennas of JFD had certain desirable performance characteristics, thereby illegally influencing the public, through the prestige of said Foundation, to patronize only the defendant JFD.

(c) Conspiring to join and joining forces in a nation-wide advertising campaign and otherwise misusing the name, influence, reputation and prestige of said Foundation and the tax-exempt University of Illinois in a crass commercial activity dedicated to the restraint of competition by such false and misleading statements above set forth, and by falsely libeling and disparaging competitors' businesses and antenna products, including those of counterclaim BT, by maliciously misleading statements that none of such competitors could use the log-periodic principle or get the allegedly desirable performance attainable therewith.

(d) Committing the acts aforesaid to create and perpetuate a reluctance in the trade and among prospective customers to purchase antennas from counterclaimant, and to create an unjustified concern that counterclaimant would not be able to continue to supply their antennas and that purchasers would subject themselves to the risk of incurring expense and inconvenience and of impairment of business reputation by being sued for patent infringement by said Foundation.

(e) Conspiring to sue and suing counterclaimant BT (and other manufacturers) under said Patent No. 3,210,767, in the United States District Court for the Northern District of Illinois, Eastern Division, in a suit wherein the complaint on its face shows that said Foundation knew it

had no jurisdiction over counterclaimant BT, but with the clear purpose of providing an excuse for each of said Foundation and JFD, within a few days after the filing of said complaint, to issue separate and independent news releases announcing suit against the counterclaimant BT, by name, and thereupon circularizing copies of said news releases to many customers of counterclaimant BT, both within the Northern District of Illinois and throughout the country, illegally to mislead said customers into thinking that counterclaimant BT had been properly sued and illegally to induce said customers to cease buying from counterclaimant and to purchase only from JFD.

(f) Conspiring to perform and performing the acts set forth in (a) through (e) above, while, on information and belief, knowing that BT, even before the issuance of said Patent No. 3,210,767, had been marketing its antennas marked "patent pending" and that such antennas were not infringements of said patent No. 3,210,767, wherefore neither the Foundation nor JFD even bothered, prior to instituting suit, to send any formal notice of infringement to counterclaimant or formally to discuss the same with it.

(g) Conspiring further to mislead the public by deliberately changing the electrical and mechanical design of many of the JFD antennas over to the design of BT's own antennas, and thereafter falsely representing to the public that these changed designs were actually those of the Foundation and JFD and were covered by the said Foundation patent, thus libeling the rights and title of BT in and to its own antennas.

(h) Representing and publishing in advertising, sales literature and instructional material accompanying the JFD antennas and under the names of both said Foundation and JFD, that said antennas operate according to a patented log-periodic formula; whereas in actual fact said

antennas were not then patented, were not log-periodic, did not operate according to the so-called log-periodic formula, and such formula as such was not patented—all facts then well-known to said Foundation and JFD but which, on information and belief, they deliberately chose to disregard in their intent to mislead and deceive the public, not only in unfair competition with counterclaimant, but in violation of the false patent marking provisions of 35 U. S. C. 292, as well.

(i) Damaging the business of counterclaimant by loss of sales and good will among its customers and potential customers and by the resulting diminution of the position and value of counterclaimant BT's own patented antennas;

(j) And, as part of the campaign unfairly to compete with counterclaimant and to try to restrain it from becoming established as a serious antenna competitor of JFD, deliberately inducing the manager and organizer of BT's complete antenna business recently to leave the employ of BT and to enter the employ of JFD, knowing that such manager was the sole and key executive in BT's antenna business and that his loss would greatly impair BT's ability to maintain continuity in the development of its antenna business.

Count II—Anti-Trust.

8. This count arises under the anti-trust laws of the United States, including the Sherman and Clayton Acts, as amended.

9. Counterclaimant reasserts the allegations of paragraphs 1-7 of this counterclaim, the acts complained of therein constituting clear violations of the anti-trust laws of the United States, as well, particularly in view of the fact that said JFD is one of the largest manufacturers of antennas for said field in the United States.

Count III—Patent Infringement.

10. This count arises under the patent laws of the United States.

11. Counterclaimant reasserts the allegations of paragraphs 1-9 of this counterclaim.

12. Counterclaimant BT is the owner of United States Letters Patent No. 3,259,904 "Antenna Having Combined Support and Lead-In" which duly and legally issued on July 5, 1966, and a copy of which is annexed hereto as Exhibit A.

13. The patent, Exhibit A, covers the Golden Dart and Golden Arrow antennas manufactured by BT and which said Foundation charged infringe the Isbell Patent No. 3,210,767, the subject matter of the complaint in this litigation.

14. As set forth in paragraph 7(g) hereof, JFD and the Foundation changed the design of certain of their antennas to copy the invention covered by the BT patent, Exhibit A, including the JFD models LPB-VU18, 15, 12, 9 and 6, LPV-TV 19, 16, 13 and 10, and possibly others presently unknown to counterclaimant, and, since the issuance of counterclaimant's patent, and within six years of the filing of this count, have been inducing the public, within the Northern District of Illinois and elsewhere in the United States, to purchase said certain antennas including said Models manufactured by JFD in clear infringement of the rights covered by said BT patent, Exhibit A; and JFD and the Foundation, pursuant to their commercial business arrangement set forth in paragraphs 5-7 hereof, are offering for sale, stocking, distributing and selling, within the Northern District of Illinois and else-

where in the United States, antennas including said Models above, that embody the invention of and infringe said BT patent, Exhibit A, and will continue so to do unless enjoined by this Court.

• • •

Wherefore, counterclaimant prays for preliminary and permanent injunctions restraining the acts of unfair competition, anti-trust violation and patent infringement complained of herein, and for a declaratory judgment that counterclaimant BT's antennas do not infringe Isbell Patent No. 3,210,767 and/or that said patent is invalid, void and unenforceable, and, in view of the wanton character of the illegal conduct of the Foundation and JFD, triple damages and attorneys fees, as provided for by statute, together with such other and further relief as may seem proper to the Court.

Hofgren, Wegner, Allen,
Stellman & McCord,
By John Rex Allen,
Attorneys for Defendant and Counterclaimant.

Rines and Rines,
Robert H. Rines,
David Rines,
10 Post Office Square,
Boston 9, Massachusetts,
Of Counsel.

Receipt of two copies of the above Answer and Counterclaim acknowledged this 1st day of September, 1966.

W. A. Marshall,
Attorney for Plaintiff and Counterclaimant Defendant.

Counterclaim Defendant's, JFD Electronics Corporation, Reply to Counterclaim of Counterclaimant, Blonder-Tongue Laboratories, Inc., and Cross-Claim

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—66-C-567) * *

Counterclaim defendant, JFD Electronics Corporation (JFD), replies to the Counterclaim herein as follows:

Resume, Paragraph 1: Identity and principal place of business of counterclaimant, Blonder-Tongue Laboratories, Inc. (BT).

Counterclaim defendant admits the allegations of paragraph 1.

Resume, Paragraph 2: The University of Illinois Foundation (Foundation) and the University of Illinois' identity ownership and control.

Upon information and belief, counterclaim defendant admits that the Foundation and University of Illinois are non-profit corporations of the State of Illinois and that each has a place of business in Urbana, Illinois. As to the other allegations, counterclaim defendant is without sufficient knowledge or information with which to form a belief as to the truth thereof.

Resume, Paragraph 3: Identity of JFD Electronics Corporation (JFD) and acts of unfair competition engaged by JFD with the Foundation.

Counterclaim defendant denies all of the allegations of paragraph 3. JFD further states that JFD Electronics Corporation, prior to becoming a party to this lawsuit, was dissolved and is now JFD Electronics Company, a Division of Stratford Retreat House, a religious corporation of the State of New York. JFD Electronics Company, the Division, has a place for doing business within this judicial district.

Reply to Counterclaim.

Count I—For Unfair Competition.

Resume, Paragraph 4: Statement of jurisdiction.

Counterclaim defendant is without sufficient knowledge or information to form a belief as to whether the amount in controversy exceeds Ten Thousand Dollars ($10,000.00), and admits the remaining allegations of paragraph 4.

Resume, Paragraph 5: The Foundation has exclusively licensed JFD under Isbell Patent No. 3,210,767 in certain fields.

Counterclaim defendant admits that it is an exclusive licensee under said Isbell patent in the field of receiving antennas for television and FM broadcasting on a royalty basis based on a percentage of sales of antennas covered by the patent. All of the other allegations are denied.

Resume, Paragraph 6: The Foundation has the primary responsibility of policing the patent and aiding the commercial sales of antennas by JFD.

Counterclaim defendant admits that under the terms of the license agreement with the Foundation, the Foundation has the initial responsibility with respect to policing of Patent No. 3,210,767 against infringement and denies all of the other allegations.

Resume, Paragraph 7: The Foundation and JFD have conspired to restrain competition.

The allegations of this paragraph, including subparagraphs (a) through (j) are denied.

Count II—Anti-Trust.

Resume, Paragraph 8: This count arises under the anti-trust laws of the United States, including the Sherman and Clayton Acts, as amended.

Counterclaim defendant is without sufficient knowledge or information to form a belief as to the truth of the

allegations of this paragraph. The particular section or sections of the anti-trust laws charged to have been violated are not identified.

Resume, Paragraph 9: The reallegation of paragraphs 1-7 of Count I of the Counterclaim.

Counterclaim defendant denies the allegations of paragraph 9. Counterclaim defendant is without sufficient knowledge or information to form a belief as to whether it is one of the largest manufacturers of antennas as alleged.

By way of separate and alternative defense to Count II, counterclaim defendant states:

1. Count II fails to state a cause of action.

2. Counterclaimant is without standing as a proper party to maintain the action purported to be set forth in Count II of the Counterclaim.

Count III—Patent Infringement.

Resume, Paragraph 10: This count arises under the patent laws of the United States.

Paragraph 10 is admitted.

Resume, Paragraph 11: Counterclaimant reasserts the allegations of paragraphs 1-9 of the Counterclaim.

Counterclaim defendant reasserts its replies to paragraphs 1-9.

Resume, Paragraph 12: BT is the owner of Patent No. 3,259,904, which was legally issued.

Counterclaim defendant admits the issuance of said patent but denies that it was legally issued. Counterclaim defendant is without sufficient knowledge or information to form a belief as to the alleged ownership of said patent.

Reply to Counterclaim.

Resume, Paragraph 13: Patent No. 3,259,904 covers antennas manufactured by BT.

Counterclaim defendant admits that the Foundation charges that the Golden Dart and Golden Arrow antennas infringe Patent 3,210,767, but is without sufficient knowledge or information to form a belief as to whether these antennas are covered by Patent No. 3,259,904.

Resume, Paragraph 14: Plaintiff and counterclaim defendant infringe Patent 3,259,904.

The allegations of paragraph 14 are denied.

Further answering the Counterclaim and for its further and additional defenses, counterclaim defendant states:

A. United States Patent No. 3,259,904 is invalid because the differences between the subject matter patented and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which said subject matter pertains.

B. United States Patent No. 3,259,904 is invalid because the subject matter thereof was known or used or invented by others in this country, or patented or described in a printed publication in this or a foreign country before the alleged invention thereof, or patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the filing date of the original application on which said patent issued.

C. United States Patent No. 3,259,904 is invalid because the subject matter therein is clearly disclosed in and lacks any element of invention over the prior art considered by the Patent Office during the prosecution of the application on which the patent issued.

D. United States Patent No. 3,259,904 is invalid because the alleged invention involves no more than the mere exer-

cise of ordinary skill in the art in view of the state of the art at the time of and long prior to the alleged invention thereof, or more than one year prior to the filing of the original application on which the patent issued, all of which prior art counterclaim defendant reserves the right to specify in accordance with the provisions of Title 35, United States Code, Section 282, for the purpose of relying upon same at the time of trial of this action.

E. United States Patent No. 3,295,904 is invalid in that the specification does not describe the alleged invention or the manner of making and using it in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which the alleged invention pertains, or with which it is most nearly connected, to make and use the same.

F. United States Patent No. 3,295,904 is invalid because there is no claim of the patent which is generic to species of the alleged invention as illustrated in Figures 1 and 2 and described in the specification of said patent.

G. United States Patent No. 3,295,904 if valid at all, is limited by the proceedings in the Patent Office; and in view of the history of the prosecution subsequent to which said patent issued, the claims of said patent as finally issued cannot be interpreted to read upon or include a product, device, or article, or combination thereof, made, used, sold or offered for sale by counterclaim defendant.

G. United States Patent No. 3,295,904, if valid, is so limited by the prior art that the claims of said patent as finally issued cannot be interpeted to read upon or include a product made, used, sold or offered for sale by counterclaim defendant.

Reply to Counterclaim.

Count IV—Declaratory Judgment.

Counterclaim defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraphs 15 through 19 of the Counterclaim.

Wherefore, counterclaim defendant prays that the Counterclaim be dismissed with costs awarded to counterclaim defendant and for such other and further relief as the court may deem just and proper.

Cross-Claim.

Now comes the counterclaim defendant, JFD Electronics Corporation, by its attorneys, and by way of cross-claim to the Counterclaim herein alleges as follows:

1. This action arises under the patent laws of the United States.

2. Cross-claimant is JFD Electronics Company, a Division of Stratford Retreat House, a religious corporation of the State of New York, and with a place for doing business within this judicial district.

3. Upon information and belief, Blonder-Tongue Laboratories, Inc. (BT) is a New Jersey corporation having its principal place of business at 9 Alling Street, Newark, New Jersey.

4. BT has violated the provisions of Title 35, United States Code, Section 292, by marking upon and using in advertising in connection with its Golden Dart antenna the Patent No. 3,016,510 importing that the same is patented for the purpose of deceiving the public and well knowing that certain Golden Dart antenna was not in any part thereof covered by said Patent No. 3,016,510.

Reply to Counterclaim

Wherefore, counterclaim defendant prays for judgment holding that:

(a) Blonder-Tongue Laboratories, Inc. is guilty of violating Title 35, United States Code, Section 292.

(b) Blonder-Tongue Laboratories, Inc. be preliminarily and permanently enjoined from the continued false use of Patent No. 3,016,510 and references to patents in violation of Title 35, United States Code, Section 292(b).

3. Blonder-Tongue Laboratories, Inc. be fined Five Hundred Dollars ($500) for each instance of its false patent marking in violation of Title 35, United States Code, Section 292(b), and that cross-claimant be awarded one-half (½) of the fine imposed upon said defendant by this Court for such false patent markings, as also provided by Title 35, United States Code, Section 292(b).

Silverman & Cass,
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Of Counsel:

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Reply of Blonder-Tongue Laboratories, Inc. to Cross-Claim of JFD Electronics Corporation

In the United States District Court.
• • (Caption—66-C-567) • •

Now comes the defendant, Blonder-Tongue Laboratories, Inc. (B-T), by its attorneys, and answers the cross-claim of JFD Electronics Corporation as follows:

1, 2, 3. Paragraphs 1, 2 and 3 of the cross-claim are admitted.

4. B-T admits that the instruction sheet packed with the Golden Dart antenna carries patent number 3,016,510 and that the box in which the Golden Dart antenna is packed and other literature relating to the Golden Dart refer to patented stainless steel stripless screws. The other allegations of paragraph 4 are denied.

Wherefore, B-T prays for dismissal of the cross-claim and such other and further relief as the court may find just and proper.

Hofgren, Wegner, Allen,
Stellman & McCord,
By Richard S. Phillips,
Attorneys for Defendant and Counterclaimant.

Of Counsel:

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Amended Answer and Counterclaim

In the United States District Court.
* * (Caption—66-C-567) * *

Amended Answer.

* * *

Amended Counterclaim.

Now comes the defendant BT, by its attorneys, and by way of amended counterclaim to the amended complaint herein, alleges as follows:

1, 2, 3. Counterclaimant realleges paragraphs 1, 2 and 3 of the counterclaim.

Count I—For Unfair Competition.

4. Counterclaimant realleges paragraph 4 of the counterclaim.

5. On information and belief, the plaintiff and counterclaim defendant, said Foundation, after acquiring rights under certain so-called log-periodic antenna designs, including title to Isbell Patent No. 3,210,767 and Mayes et al. Patent Re. 25,740, the subject matter of the amended complaint herein, entered into a commercial business arrangement, including a license agreement, with counterclaim defendant JFD to exploit the said antenna designs and patents in the field of receiving antennas for television and FM broadcast, under the terms of which the antennas for said field would be exclusively manufactured and sold by JFD and distributed by JFD from its places of business in Chicago, Illinois, and elsewhere, and moneys received therefrom would be divided between JFD and the Foundation in accordance with certain percentage figures.

6. Further in accordance with said commercial business arrangement, on information and belief, the Foundation undertook the primary responsibility of policing said patents and of aiding the commercial sales of the antennas of JFD, in which, as before stated, it shared in the sales returns, by news releases and other advertising media using the name of said Foundation and threatening all manufacturers in the industry (and thus counterclaimant BT) with suit if any so-called log-periodic antennas were made and sold by them, and by announcements and mailings to customers of such other manufacturers, including customers of BT, of suits which were filed and intended suits, regardless of whether such antennas were actually covered by said patents or any other patent of the Foundation or JFD.

7. On information and belief, said Foundation and JFD conspired unlawfully to restrain competition in the field of television and FM broadcast receiving antennas, and jointly and severally have engaged in unlawfully restraining such competition by at least the following acts and possibly others, presently unknown to counterclaimant, but as to which counterclaimant prays leave to add by amendment to this amended counterclaim upon completion of discovery herein:

(a) Publication of copious advertisements in national, technical and popular publications and elsewhere, circulated throughout the United States, including the Northern District of Illinois, using the names of both said Foundation and JFD, knowingly and falsely representing the scope of their patent coverage as embracing all antennas of the so-called log-periodic type, and generally threatening every antenna manufacturer (which includes counterclaimant BT) and customers in said field with patent suit even before the issuance of said Patents No. 3,210,767 and Re. 25,740, illegally to restrain competition in the manu-

facture and sale of all log-periodic type antennas, including those clearly outside such patent coverage.

7(b) through 7(j). Counterclaimant realleges paragraphs 7(b) through 7(j) of the counterclaim.

Count II—Anti-Trust.

8 and 9. Counterclaimant realleges paragraphs 8 and 9 of the counterclaim.

Count III—Patent Infringement.

10 through 13. Counterclaimant realleges paragraphs 10 through 13 of the counterclaim.

14. As set forth in paragraph 7(g) hereof, JFD and the Foundation changed the design of certain of their antennas to copy the invention covered by the BT patent, Exhibit A, including the JFD models LPV-VU18, 15, 12, 9 and 6, LPV-TV 19, 16, 13 and 10, and possibly others presently unknown to counterclaimant, and, since the issuance of counterclaimant's patent, and within six years of the filing of this count, have been inducing the public, within the Northern District of Illinois and elsewhere in the United States, to purchase said certain antennas including said Models manufactured by JFD in clear infringement of the rights covered by said BT patent, Exhibit A; and JFD and the Foundation, pursuant to their commercial business arrangement set forth in paragraphs 5-7 hereof, are offering for sale, stocking, distributing and selling, within the Northern District of Illinois and elsewhere in the United States, antennas including said Models above, that embody the invention of and infringe said BT patent, Exhibit A, and will continue so to do unless enjoined by this Court.

• • •

Wherefore, counterclaimant prays for preliminary and permanent injunctions restraining the acts of unfair competition, anti-trust violation and patent infringement complained of herein, and for a declaratory judgment that counterclaimant BT's antennas do not infringe Isbell Patent No. 3,210,767 or Mayes et al. Patent Re. 25,740 and/or that said patents are invalid, void and unenforceable, and, in view of the wanton character of the illegal conduct of the Foundation and JFD, triple damages and attorneys fees, as provided for by statute, together with such other and further relief as may seem proper to the Court.

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By /s/ Richard S. Phillips,
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January 23, 1967.

Counterclaim Defendant's Reply to Amended Counterclaim of Counterclaimant, and Cross-Claim

IN THE UNITED STATES DISTRICT COURT.
• • (Caption—66-C-567) • •

Counterclaim defendant, JFD Electronics Corporation (JFD), replies to the Amended Counterclaim as follows:

Resume, Introductory paragraph to Amended Counterclaim: Reallegation of paragraphs 1, 2 and 3 of the Counterclaim.

JFD realleges its replies to paragraphs 1, 2 and 3 of the Counterclaim.

Count I—For Unfair Competition.

Resume, Paragraph 4: Reallegation of paragraph 4 of Counterclaim.

JFD realleges its reply to paragraph 4 of the Counterclaim.

Resume, Paragraph 5: The Foundation has exclusively licensed JFD under Isbell Patent No. 3,210,767 and Mayes, et al. Patent Re. 25,740 in certain fields.

JFD admits that it is an exclusive licensee under said patents in the field of receiving antennas for television and FM broadcasting on a royalty basis. All of the other allegations are denied.

Resume, Paragraph 6: The Foundation has the primary responsibility of policing the patents and aiding the commercial sales of antennas by JFD.

JFD admits that under the terms of the license agreement with the Foundation, the Foundation has the initial responsibility with respect to policing of patents against infringement and denies all of the other allegations.

Reply to Amended Counterclaim.

Resume, Paragraph 7: The Foundation and JFD have conspired to restrain competition.

The allegations of this paragraph including sub-paragraphs (a) through (j) are denied.

Count II—Anti-Trust.

Resume, Paragraphs 8 and 9: Paragraphs 8 and 9 of the Counterclaim are realleged.

JFD realleges its replies to paragraphs 8 and 9 of the Counterclaim and reasserts by way of separate and alternative defenses to Count II the defenses asserted in its reply to the Counterclaim.

Count III—Patent Infringement.

Resume, Paragraphs 10 though 13: Paragraphs 10 through 13 of the Counterclaim are realleged.

JFD realleges its replies to paragraphs 10 through 13 of the Counterclaim.

Resume, Paragraph 14: JFD and the Foundation infringe Patent 3,259,904.

The allegations of paragraph 14 are denied.

Further answering the Amended Counterclaim and for its further and additional defenses, counterclaim defendant reasserts paragraphs A through G (second occurrence) of its reply to the Counterclaim.

Counts IV and V—Declaratory Judgment.

JFD is without sufficient knowledge or information to form a belief as to the truth of the allegations of the paragraphs of Counts IV and V.

Wherefore, JFD prays that the Amended Counterclaim be dismissed with costs awarded to JFD and for such other and further relief as the Court may deem just and proper.

Cross-Claim.

Counterclaim defendant realleges all of the paragraphs of its Cross-Claim to the Counterclaim as herein filed, including the prayer for relief as stated therein.

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Reply of Blonder-Tongue Laboratories Inc. to Cross-Claim of JFD Electronics Corporation

In the United States District Court.
• • (Caption—66-C-567) • •

Defendant, Blonder-Tongue Laboratories Inc., by its attorneys, answers the realleged cross-claim of JFD Electronics Corporation as follows:

Blonder-Tongue Laboratories Inc. realleges all of the paragraphs of its reply to the cross-claim as herein filed.

Hofgren, Wegner, Allens, Stellman & McCord,
By Richard S. Phillips,
Attorneys for Defendant and Counterclaimant.

February 3, 1967.